IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22946 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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BALAKRISHNAN GIRI - Petitioner
Versus
UNION OF INDIA
THROUGH ITS SECRETARY AND OTHERS - Respondents

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Appearance :
MR G RAMAKRISHNAN for the Petitioner.
MR HARIN P RAVAL for Respondents : 1 - 5.
RULE UNSERVED for Respondent : 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 01/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Heard learned Counsel Shri G. Ramakrishnan for the petitioner and learned Assistant Solicitor General Shri Harin P. Raval for the respondents. The petitioner was serving as a Constable Fitter in the Central Reserve Police Force (for short, **"CRPF"**). He was promoted as Head Constable Fitter in June 2003. He had put in 14 years of service. For an incident dated 03-09-2004 of slapping a person without any rhyme or reason, he was punished with the order dated 17-08-2005 of Compulsory Retirement from service. Appeal filed against that order of penalty was also dismissed.

2. Initially, under some wrong advice, he approached Central Administrative Tribunal which had no jurisdiction. Therefore, his application was disposed of on 03-10-2006 by the learned Tribunal only on the ground of jurisdiction. Thereafter, he approached this Court by way of this petition.

3. Impugned order dated 17-08-2005 (Annexure-A to the petition) clearly shows that the petitioner admitted his guilt. However, he pleaded mercy on humanitarian ground. Considering the fact that the petitioner was serving in a disciplined Armed Force and considering his long service of 14 years, the Disciplinary Authority i.e. Commandant took a lenient view and imposed penalty of Compulsory Retirement from service wef 17-08-2005 with all admissible pensionary benefits as prescribed under Rule 40 of CCS (Pension) Rules, 1972. This is challenged in this writ petition.

4. Learned Counsel Shri Ramakrishnan for the petitioner vehemently submitted that misconduct was not such which calls for such a major penalty of Compulsory Retirement from service. It is true that the misconduct committed by the petitioner was of slapping his senior officer of the Force without any rhyme or reason. The defence was that he was suffering from mental illness. It seems that considering this aspect of the case, the Disciplinary Authority, instead of passing maximum penalty of

dismissal from service, passed an order of Compulsory Retirement so that the petitioner can at least get his pensionary benefits. In such type of cases where the Authority has exercised its discretion, then certainly this Court cannot sit in appeal over the said decision. On the facts and in the circumstances of the case, it cannot be said that the penalty of Compulsory Retirement imposed was highly disproportionate.

5. Before parting, we may state that at the time of hearing of admission of this petition, learned Counsel Shri Ramakrishnan had submitted that the petitioner will not claim back-wages if he is given appointment on any civilian post. On this statement being made at the Bar, we had admitted the petition by issuing Rule on it. While issuing Rule, we also directed the respondent-Authority to consider the case of the petitioner for posting him on a civilian post where fire-arm was not to be used. In response to the order dated 08-11-2006 passed by this Court, learned Assistant Solicitor General Shri Raval has produced on record letter dated February 28, 2007

passed by the DIGP whereby the Authority has expressed its inability to provide any alternative appointment to the petitioner on a civilian post for the reasons stated in it.

6. Under the circumstances, there is no question of interference with the order of penalty of Compulsory Retirement passed by the Disciplinary Authority.

7. In view of the above, this petition fails and is hereby dismissed. Rule discharged. No costs.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath